

being obvious over Inoue et al. ("Inoue I"), JP 04099730, Inoue et al. ("Inoue II"), JP 04099771, and Shrikhande et al. ("Shrikhande"), *J. Food. Science*, 39: 904 (1974). The Examiner finds that Inoue I and II "teach the use of ascorbic acid, and flavanoids for the prevention/inhibition of browning in pharmaceuticals, cosmetics and foods", and Shrikhande "teaches that flavanols have strong antioxidant properties, and are used in foods as preservatives and antioxidants." The Examiner also finds that "it is well known to one of ordinary skill in the art that browning of an organic compound or composition is *equated* to its oxidation," and, thus, "given the references one would have been motivated to use the flavanoid class of compounds in cosmetic and or dermatological compositions to prevent the oxidation of the composition and/or ascorbic acid and ascorbyl compounds."

In response, Applicants dispute the Examiner's finding that one of ordinary skill in the art would equate the browning of an organic compound or compositions to its oxidation. Although browning is often due to oxidation, this is *not* always the case. Even in the absence of oxygen, unspecific reactions can be triggered by light, especially UV-light (exposure to sunlight). The UV-reaction products are most usually colored at least yellowish (after a shorter period of irradiation), brownish or even blackish brown (which should, in most case, involve a very large dose of UV-light, of course). Moreover, independently from UV-reactions, even if redox processes are concerned, in complex mixtures, these precesses need not necessarily be restricted to oxidation by oxygen itself. The so-called Maillard reaction between aldehydic compounds (e.g. sugar-derivatives) and amino groups (proteins, amino acids etc) leads to brownish-colored

products, as well (the color of the crackling of bread, roast meat and so on is related to the maillard reaction). Thus, it cannot be presumed that because browning of an organic compound or composition is mentioned, its oxidation must be involved.

In the absence of a definite connection between browning and oxidation, Applicants submit that the Examiner would be fully justified to reconsider and withdraw this rejection. The Examiner himself concedes that "the references do not specifically disclose the use of these compounds to prevent oxidation in cosmetic or dermatologic compositions." Since the browning in the references is not necessarily due to oxidation, Applicants submit that persons having ordinary skill in the art would not have been reasonable to expect that flavones, flavanones and flavonoids would be useful to prevent oxidation of ascorbic acid and/or ascorbyl compounds.

In view of the foregoing, Applicants submit that there is insufficient evidence that a person skilled in the art would have been motivated to carry out the present method with a reasonable expectation of success. In order to further distinguish the claims from the prior art, Applicants have limited to the preferred α -glucosylrutin. Applicants submit that the Examiner should now reconsider and withdraw this rejection. An early notice that this rejection has been reconsidered and withdrawn is, therefore, earnestly solicited.

Applicants believe that the foregoing constitutes a bona fide response to all outstanding objections and rejections.

Applicants also believe that this application is in condition for immediate allowance.

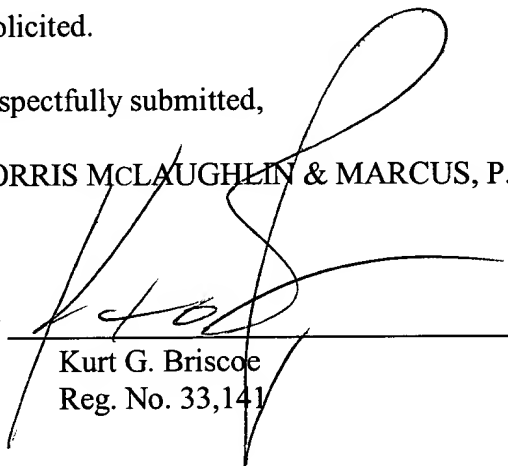
However, should any issue(s) of a minor nature remain, the Examiner is respectfully requested to telephone the undersigned at telephone number (914) 332-1700 so that the issue(s) might be promptly resolved.

Early and favorable action is earnestly solicited.

Respectfully submitted,

NORRIS MCLAUGHLIN & MARCUS, P.A.

By


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CERTIFICATE OF MAILING

I hereby certify that the foregoing Amendment under 37 CFR § 1.111 is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Hon. Commissioner of Patents, Washington, D.C. 20231, on the date indicated below:

Date: August 22, 2000

By


Kurt G. Briscoe